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### REMARKS/ARGUMENTS

#### **I. Introduction**

Applicants appreciate the obvious care with which the Examiner has reviewed the present application. Claims 5-7 remain under examination in this Request for Continued Examination application.

#### **II. Dr. Relyveld's Declaration**

Upon filing of this RCE, the Examiner is respectfully requested to consider the declaration from Dr. Relyveld, which shows a distinction between the material, structural, and functional characteristics of the claimed composition and the composition of the cited prior art – U.S. Patent No. 4,016,252 to Relyveld.

The Examiner indicated that the declaration filed with the previous response was not considered because (a) good and sufficient reasons why it was not presented earlier were not shown and (b) it is drawn to a co-pending application and is not germane to the instant case. First, health reasons made it difficult to obtain a declaration from the declarant earlier. Second, the declaration was filed in connection with co-pending application number 09/794,576, which is a divisional of application serial number 09/496,771. The present application is a CIP of application serial number 09/496,771. In other words, the application to which the declaration was “drawn” and the present application have the same parent application and are drawn to the same particles, albeit the present application covers different uses of those particles. Accordingly, applicants respectfully submit that the declaration is indeed germane to the subject matter of the present application. To the extent that the Examiner maintains the position that it is not, further explanation of the reasoning behind that position is respectfully requested.

#### **III. 35 U.S.C. §112 Rejections**

The Examiner has maintained the rejection of claims 5-7 under 35 U.S.C. §112, second paragraph, as being indefinite due to the use of the phrase “induce immunity in a

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patient.” Applicants continue to submit that the phrase, by its plain and ordinary meaning, means to induce an immunological response in a patient. Applicants refer the Examiner to the most recently-filed response, which points to specific areas in the specification where various immunological responses are discussed and further defined. Applicants further respectfully refer the Examiner to MPEP 2173.02, which states that:

“[t]he examiner’s focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness (emphases in original). Some latitude in the manner of expression and aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement.

Definiteness of claim language must be analyzed, not in a vacuum, but in light of the content of the particular application disclosure. MPEP 2173.02. Furthermore, a 35 U.S.C. 112, second paragraph rejection is proper only if the language of the claim is such that a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement. In the present case, if a drug manufacturer teaches a method of inducing immunity by selling particles of the type described in claims 5-7, infringement would be apparent. Accordingly, the notice function of the claim is served with the language as presently-presented.

To the extent that the Examiner would prefer to see different language or a different phrase used, applicants respectfully request a suggestion that would advance the prosecution of this case. To the extent that the Examiner maintains this rejection, applicants respectfully request the required “analysis as to why the phrase(s) used in the claim is ‘vague and


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indefinite? " in light of the clarifications that Applicants have pointed out in the specification.  
See MPEP 2173.02.

### CONCLUSION

Applicants respectfully submit that claims 5-7 are in condition for immediate allowance, and requests early notification to that effect. If any issues remain to be resolved, the Examiner is respectfully requested to contact the undersigned at 404.815.6147 to arrange for a telephone interview.

Respectfully submitted,

  
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